

1954

March 9

John Samuel Wheeler, M.D., Secretary,
Board of Registration in Medicine
State House
Concord, New Hampshire

Dear Sir:

Whether the Board of Registration in Medicine has jurisdiction to consider an application of an individual, presumably otherwise qualified in psychology, to practice psychology in the State of New Hampshire depends upon whether the applicant proposes to "prescribe for or otherwise treat any human ailment, physical or mental". R.S., c. 230, s. 1.

The Legislature has set up your Board to regulate the practice of medicine. The term "medicine" is used in our statute as indicating a science or profession rather than a remedial agent for the cure or mitigation of disease. The purpose of statutes regulating the practice of medicine and its branches is to safeguard the public health and welfare rather than to protect physicians themselves. 70 C.S.S., 3, and cases cited.

It has been intimated in the law that a state has no power to require that all persons of all schools must take the same technical examination, but since no one is qualified to diagnose and treat human ailments and disease who does not understand and recognize such ailments and diseases or appreciate the nature and gravity thereof, it is a generally accepted rule that a state may require all practitioners of the healing art, regardless of the school or system they practice, to stand the same general examination on basic and fundamental subjects. 41 Am. Jur. 105. The practice of medicine has been described as,

"... the science and art dealing with the prevention, cure and alleviation of diseases; in a narrower sense that part of the science and art of restoring and preserving health which is the province of the physician as distinguished from the surgeon and obstetrician."

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"Medicine' relates to the prevention, cure, and alleviation of disease, the repair of injury or treatment of abnormal or unusual states of the body, and their restoration to a healthful condition, and is not confined to the administering of medical substances, or the use of surgical or other instruments."

"The term 'medicine' is not limited to substances supposed to possess curative or remedial properties, but means also the healing art, the science of preserving health and treating disease for the purpose of cure, whether such treatment involves the use of medical substances or not."

"Medicine' is the art of understanding diseases and curing or relieving them when possible." Words and Phrases, Volume 261, Medicine, pp. 633, 635.

Diagnosis of the patient's symptoms to determine what disease or infirmity he is afflicted with, and then to determine and prescribe the remedy and treatment to be used in attempting to cure him, have been said to be necessary elements of the practice of medicine or surgery. The failure of the statutes to provide any board or authority to which certain drugless practitioners may apply for license does not render the statutes discriminatory where such persons may apply for license under the general licensing statute which imposes general requirements applicable to all schools of medicine.

In New Hampshire it has been decided that a practitioner of medicine and surgery is bound to possess and exercise that degree of skill which is ordinarily possessed and exercised by those engaged in the practice of the same profession in similar localities.

If in the practice of psychology the applicant professes to diagnose and treat human mental and physical ailments with a view of undertaking to cure the afflicted, he is subject to the provisions of P.E. c. 250. If you determine that diagnosis, treatment and an undertaking to cure human ailments, mental or physical, are not elements of the practice of psychology, no license of course would be required.

Very truly yours,

George F. Nelson
Assistant Attorney General